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**HARTMAN AND HARTMAN P.C.**  
**552 EAST 700 NORTH**  
**VAIPARAISO, IN 46383**

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**SEP 15 2004**

In re Application of  
Robert William Bruce  
Application No. 10/063,962  
Filed: May 30, 2002  
Attorney Docket No. 13DV-13657

**OFFICE OF PETITIONS**  
**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed October 20, 2003, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The reply submitted on January 20, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed June 4, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed, and no extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 21, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

As to item (1), the request for continued examination (RCE) under 37 CFR 1.114 filed on July 28, 2004 was improper since no submission as required by 37 CFR 1.114 was filed. Therefore, this application cannot be revived until a proper reply has been received.

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.<sup>1</sup>



Wan Laymon  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup> Effective September 27, 2004, the phone number will be 571-272-3220.